

## **REMARKS**

### ***Status of the Claims***

Claims 26-29 are pending; claims 1-25 are canceled; and claims 26 and 27 are amended.

Claim 26 has been amended to depend from claim 27, rather than canceled claim 24.

Claims 26-29 have been amended to improve grammar.

No new matter has been added.

### ***Summary of the Interview***

Applicants and Applicants' representative thank the Examiner for the courtesies extended in the interview conducted on January 7, 2008. In the interview, the claim rejections imposed in the January 18, 2008 Office Action were discussed. The Examiner indicated that the experimental results submitted in the Declarations of Dr. Koseki and Dr. Nomura would be considered in the obviousness analysis of claim 27 and its dependent claims. No agreement was reached.

### **1. Claim Rejections under 35 USC Section 102**

#### **1.1 Yamamura et al.**

On pages 2-3 of the Office Action, the Examiner maintains the rejection of claims 21-23 and 26 as allegedly anticipated by Yamamura et al.

Applicants have canceled claims 21-23 and amended claim 26 so that it depends from claim 27, thereby obviating the rejection.

### 1.2 Yarkoni et al.

On page 4 of the Office Action, the Examiner maintains the rejection of claims 21-26 as allegedly anticipated by Yarkoni et al.

Applicants have canceled claims 21-25 and amended claim 26 so that it depends from claim 27, thereby obviating the rejection.

### 1.3 Zbar et al.

On pages 5-6 of the Office Action, the Examiner maintains the rejection of claims 21-26 as allegedly anticipated by Zbar et al.

Applicants have canceled claims 21-25 and amended claim 26 so that it depends from claim 27, thereby obviating the rejection.

## **2. Claim Rejections under 35 USC Section 112, Second Paragraph**

On pages 7-10 of the Office Action, the Examiner imposes several indefiniteness rejections. Applicants respectfully traverse.

On page 7 of the Office Action, the Examiner requests clarification of the term, "crude particles." Applicants maintain that the term is defined in page 18 of the instant specification. But Applicants submit that this clarification request is rendered moot by the above-described claim amendments and/or cancellations. Accordingly, this indefiniteness rejection is overcome.

On pages 8-9 of the Office Action, the Examiner imposes a series of rejections against claims 21-29 on the allegation that the claimed particle diameter of less than 100  $\mu\text{m}$  is vague and indefinite because it has no lower limit. Although Applicants disagree with the Examiner, this indefiniteness rejection is rendered moot by the above-described claim amendments and/or cancellations. Accordingly, this indefiniteness rejection is overcome.

On page 9 of the Office Action, the Examiner rejects claims 27-29 on the allegation that the claimed particle diameter of 100  $\mu\text{m}$  or more is vague and indefinite because it is unclear how a particle can have a diameter of 100  $\mu\text{m}$  or more and not be visible. Although Applicants do not understand the Examiner's reasoning here, it is submitted that the above-described amendment to claim 27 obviates this indefiniteness rejection.

### **3. Claim Rejections under 35 USC Section 103**

On pages 10-13 of the Office Action, the Examiner rejects claims 27-29 as allegedly obvious over Yarkoni et al. Applicants respectfully traverse.

First, Applicants direct the Examiner's attention to the October 25, 2006 declaration of Dr. Koseki, which reports properties of the oil-in-water emulsions prepared according to the instant invention and according to Yamamura et al. As can be seen, Figure 3(a) of Dr. Koseki's declaration shows that the emulsion prepared by the Yamamura et al. method contains insoluble BCG-CWS that forms visible particle aggregations in the emulsion. Applicants point out that, because the particle aggregations in the Yamamura et al. emulsion are visible, they are greater than 100  $\mu\text{m}$  in diameter.

In contrast, the emulsions defined by instant claim 27 do not have particles of 100  $\mu\text{m}$  or more. Accordingly, Yamamura et al. does not teach the instantly claimed emulsions.

Next, Applicants point out that the emulsion taught by Yarkoni et al. is the same as the emulsion taught by Yamamura et al. So Yarkoni et al. fails to teach the instantly claimed emulsions for the same reasons as Yamamura et al.

Because Yarkoni et al. fails to teach the instantly claimed emulsions, the Examiner has failed to establish *prima facie* obviousness. Accordingly, the obviousness rejection is improper, and Applicants respectfully request its reconsideration and withdrawal.

#### 4. Conclusion

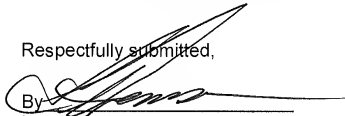
In view of the foregoing amendments and remarks, Applicants submit that the instant application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson Reg. No. 30,330 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: March 12, 2008

Respectfully submitted,

By 

Leonard R. Svensson  
Registration No.: 30,330  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
12770 High Bluff Drive  
Suite 260  
San Diego, California 92130  
(858) 792-8855  
Attorney for Applicant